IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12365 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABURAO TULSIRAO MARATHA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12365 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS HARSHA DEVANI, APP, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 2.11.2002 by

which he is detained as a bootlegger under PASA. The said order is challenged by the petitioner on various grounds.

2. The learned advocate for the petitioner submitted that at the relevant time, the petitioner was already in judicial custody. However, the authority has stated that the petitioner may get bail at any point of time and may continue the said activity again. It is, therefore, submitted that the authority has not given appropriate reasons as to on what material it has reached the said conclusion that the petitioner may be released on bail at any point of time. In this behalf, reference is made to the judgment of the Apex Court reported in AIR 2000 SC 3675 and particularly para 7 of the said judgment.

3. In the grounds of detention, there is reference about two criminal cases. The detaining authority has also clearly stated that the petitioner is in judicial custody. However, it is stated that the petitioner may get bail and thereafter he may continue the said activity. The detaining authority has not stated as to on what basis and as to on what material it has reached the said conclusion that the petitioner may get the bail. Considering the aforesaid aspect and the aforesaid ground, the impugned order of detention is required to be set aside as it suffers from non-application of mind.

4. For the foregoing reasons, the petition is allowed. The order of detention dated 2.11.2002 is quashed and set aside. The detenu, Baburao Tulsirao Maratha is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J)

zgs/-